

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Oliver Lucien Garr,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:08cv293
vs.	:	
	:	Chief Judge Susan J. Dlott
Warden, Dayton Correctional Institution,	:	
	:	
Respondent(s).	:	

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Karen L. Litkovitz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on February 2, 2011 a Report and Recommendation (Doc. 40). Subsequently, the respondent and petitioner filed objections to such Report and Recommendation respectively (Docs. 41 and 42). Petitioner then filed a reply to the objections by the respondent (Doc. 43).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendations should be adopted.

Accordingly, petitioner's petition for writ of habeas corpus (Doc. 1) is **DENIED** with prejudice.

A certificate of appealability will issue since the issues presented in the instant petition, challenging the sufficiency of circumstantial evidence supporting petitioner's conviction for trafficking as a first-degree felony and major drug offender offense under Ohio Rev. Code §

2925.03(C)(4)(g), are “adequate to deserve encouragement to proceed further.” *See Slack v. McDaniel*, 529 U.S. 473, 475, (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)); *see also* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting the Report and Recommendation will be taken in “good faith,” and therefore **GRANTS** petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F. 3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

s/Susan J. Dlott
Chief Judge Susan J. Dlott
United States District Court